

Honorable Judge Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

V.

MITSUBISHI AIRCRAFT CORPORATION,
MITSUBISHI AIRCRAFT CORPORATION
AMERICA INC., AEROSPACE TESTING
ENGINEERING & CERTIFICATION INC.,
MICHEL KORWIN-SZYMANOWSKI,
LAURUS BASSON, MARC-ANTOINE
DELARCHE, CINDY DORNÉVAL, KEITH
AYRE, AND JOHN AND/OR JANE DOES 1-
88.

Defendants.

No. 2:18-cv-01543-RAJ

DECLARATION OF JOHN D.
DENKENBERGER IN SUPPORT
OF BOMBARDIER INC.'S REPLY
TO AEROTEC DEFENDANTS'
OPPOSITION TO MOTION TO
SEAL EXHIBITS A-J TO THE
DECLARATION OF DANIEL
BURNS AND EXHIBIT A TO
THE DECLARATION OF DAVID
TIDD IN SUPPORT OF ITS
MOTION FOR A PRELIMINARY
INJUNCTION

I, John D. Denkenberger, declare as follows:

1. I am an attorney with the law firm of Christensen O'Connor Johnson Kindness PLLC ("COJK") and counsel of record for Plaintiff Bombardier Inc. ("Plaintiff" or "Bombardier"). I have personal knowledge of the matters addressed herein. This declaration is being submitted in support of Bombardier Inc.'s Reply to AeroTEC Defendants' Opposition to Bombardier Inc.'s Motion to Seal Exhibits A-J to the Declaration of Daniel Burns and Exhibit A to the Declaration of David Tidd in Support of its Motion for a Preliminary Injunction (Dkt. No. 3) ("Motion").

1 2. On October 30, 2018, I returned a phone call that I had previously received
 2 from Mark Bailey, current counsel of record for Defendants Aerospace Testing Engineering
 3 & Certification Inc. (“AeroTEC”), Mr. Michel Korwin-Szymanowski, Mr. Laurus Basson,
 4 and Ms. Cindy Dornéval (collectively, “the AeroTEC Defendants”). During that call, Mr.
 5 Bailey introduced himself, and I had mentioned that I had been in contact with counsel for
 6 MITAC America regarding the proprietary and confidential nature of the exhibits filed under
 7 seal and that are the subject of Bombardier’s Motion to Seal, Dkt. No. 3. I explained that I
 8 was working with Mr. Riedinger to make the documents available for review, under the
 9 condition that the documents would not be shared with his client, so that Perkins Coie LLP
 10 could have a more informed opinion on whether to oppose Bombardier’s Motion to Seal. I
 11 offered to Mr. Bailey the same opportunity to review the documents under the same
 12 condition, and I expressed that we were willing to work with him (as well as with other
 13 Defendants’ counsel) to afford the fullest opportunity to become informed with respect to the
 14 Motion to Seal. This included an expressed willingness to reset the noting date of the Motion
 15 to Seal if needed.

16 3. Later on October 30, 2018, in response to counsel for MITAC America’s
 17 request to do so, I authorized the filing of Bombardier’s notice to re-note the Motion to Seal
 18 to November 9, 2018, Dkt. No. 22.

19 4. The following day, on October 31, 2018, Mr. Bailey visited the offices of
 20 COJK to review the documents that are the subject of Bombardier’s Motion to Seal. I spoke
 21 with him briefly that day to introduce myself in person, and I explained again that we were
 22 willing to work with him to accommodate and reset all currently noted dates, including the
 23 noting date for the Motion for Preliminary Injunction as well as the Motion to Seal. In
 24 concluding our conversation, Mr. Bailey made no mention of any procedural or substantive
 25 defect in Bombardier’s Motion to Seal.

26 5. On November 5, 2018, counsel for MITAC America requested a
 27 teleconference to discuss the possibility of adjusting the noting date for Bombardier’s

1 preliminary injunction motion. Specifically, he requested a call that afternoon. I responded
 2 by stating that I was not available that afternoon, but I suggested a call for the following
 3 morning at 10:00 a.m. I also included Mr. Bailey in the response email, suggesting that it
 4 made sense for all counsel of record to participate in the call. Finally, I agreed in that email to
 5 re-note the date for the Motion for Preliminary Injunction, with the precise date of re-noting
 6 to be discussed during the call set for the following day.

7 6. On November 6, 2018, I participated in that telephone conference along with
 8 Brian McMahon, my co-counsel in this matter for Bombardier; Jerry Riedinger and Mary
 9 Gaston, counsel of record for MITAC America; and Mark Bailey and Richard Omata, counsel
 10 of record for, at that time, AeroTEC only. The call was brief due to some counsel's limited
 11 availability that morning, but the topics of discussion included whether the parties could agree
 12 to terms limiting the availability and distribution of the sealed exhibits once Defendants'
 13 counsel received copies of the same. Mr. McMahon explained that he was working on a draft
 14 proposed protective order, and he would circulate it later that afternoon. All counsel agreed to
 15 reconvene the teleconference the following morning to discuss, among other issues, the
 16 proposed protective order. At no time during the call did counsel for any defendant raise
 17 procedural or substantive issues related to Bombardier's Motion to Seal.

18 7. The following morning, on November 7, 2018, all counsel present for the
 19 November 6, 2018 call participated in the follow-up call. Mr. McMahon had circulated the
 20 draft proposed protective order, a true and correct copy of which is attached hereto as Exhibit
 21 A. I arrived a few minutes after the call had already started, and Mr. McMahon summarized
 22 for me during the call some of the talking points that had been covered prior to my arrival.
 23 Among those topics, I am informed, was that counsel for AeroTEC mentioned a need for the
 24 individual defendants to see the sealed documents to determine whether the documents were
 25 in fact confidential and proprietary, whether they had seen those documents before, and
 26 whether, in certain cases, they actually had copies of the documents as alleged in
 27 Bombardier's Complaint. I understand that Mr. McMahon had responded to counsel's

1 concern prior to my arrival by stating that the position made sense, and that Bombardier was
2 certainly willing to consider a proposed revision from AeroTEC's counsel to accommodate
3 that concern. Prior to the conclusion of the call, AeroTEC's counsel committed to proposing
4 such a revision in writing. Further, MITAC America's counsel also stated that it would work
5 on circulating an "interim" protective order that would have applicability only with respect to
6 briefing the Motion for Preliminary Injunction.

7 8. Also during this call, in an effort to make progress on what I believed to be a
8 relatively simple matter, I asked whether all counsel could stipulate to Bombardier's Motion
9 to Seal. I further clarified that this would not be construed as an admission on any
10 defendants' part that the documents contained trade secret information. My request was met
11 by a topic change. At no time, however, did any of defendants' counsel raise any issue—
12 procedural or otherwise—related to Bombardier's Motion to Seal. Defendants' counsel even
13 raised no issue when, upon concluding the call, I asked each party represented whether there
14 were any other outstanding issues to address.

15 9. On November 7, 2018, Mr. Bailey entered his notice of appearance on behalf
16 of the individual defendants Mr. Korwin-Szymanowski, Mr. Basson, and Ms. Dornéval.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated this 9th day of November, 2018.

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

s/ John D. Denkenberger
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/ John D. Denkenberger

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10 *Attorneys for Plaintiff Bombardier Inc.*